IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1604 OF 2005

Sudhir Suryaji Khade & anr. ...Appellants

Vs.

Miss Aswini Yeshwant Mane & Anr. ...Respondents

Mr.G.R.Rege i/b Mr.G.M.Savagave for the Appellants
Mr. S.S.Pandit for the Respondent No.1.

CORAM: A.S.OKA, J.
DATED: MARCH 22,2006.

P.C.:

1. The Second Appeal is preferred by the original defendant Nos.1 and 3. The Respondent No.1 is the original Plaintiff and the Respondent No.2 is the original Defendant No.2. The Respondent No.2 is the mother of the Respondent No.1

2. Undisputedly one Yashwant Mane, the father of the Respondent No.1 and the husband of the Respondent No.2 was the owner of the suit land. The said Yashwant was a mentally challenged person. The second respondent being the wife of the said Yashwant was appointed as next friend of the said Yashwant by a Competent Court. On 27th August 1989 the said Yashwant died intestate. At that time, the first respondent was a minor. The case of the Appellants is that on 4th May 1991 the second Respondent executed an agreement for sale in favour of the Appellant No.1 who was a minor at that time and therefore agreement for sale was signed by the Appellant No.2

as his guardian. It must be noted here that a suit for specific performance of the said agreement is pending in the civil court.

3. The first Respondent during her minority filed the present suit through her maternal uncle as her next friend. The suit is for perpetual injunction restraining the present Appellants from obstructing her alleged possession over the suit land. The defence of the Appellants was that the second Respondent has put them in possession of the suit land on the basis of agreement for sale dated 4th May 1991.

4. The Trial Court dismissed the suit filed by the first Respondent. The Trial Court held that so far as the agreement dated 4th May 1991 is concerned, it was executed without there being any legal necessity so far as one half share of the first respondent is concerned. The Trial Court held that the first Respondent-Plaintiff has proved her possession over the suit land on the date of institution of the suit. However, a further finding was recorded that she has failed to establish that the present Appellants obstructed her possession. The Appellant court in an Appeal preferred by the Respondent No.1 has interfered. The Appellate Court confirmed the finding of the Trial Court as regards possession of the first respondent and held that obstruction to her possession at the instance of the Appellants was established. The Appellate Court accordingly

decreed the suit and granted perpetual injunction in favour of the first Respondent.

5. Shri Rege, the learned Counsel for the Appellants submitted that there are clear recitals in the agreement date 4th May 1991 executed by the second Respondent to show that the Appellant No.1 was put in possession. He submitted that execution of the agreement was duly proved. He submitted that on the date of the execution of the agreement the first Respondent was a minor and therefore the second Respondent in her capacity of as Guardian had a right to hand over the possession of the suit land and in fact she had handed over the possession in favour of the Appellant No.1. He, therefore, submitted that the Respondent no.1 could not have claimed to be in possession on the date of the institution of the suit. Shri Pandit for the Respondents supported the impugned Judgment and decree.

6. I have considered the rival submissions. The finding of the trial court as regards possession is on the basis of the entries in the revenue record. The Trial Court has come to the conclusion that the present Appellants were never put in possession even after execution of the agreement in question. The said finding has been confirmed by the Appellate Court. It must be noted here that the agreement dated 4th May 1991 was allegedly executed in favour of the Appellant no.1 when he was a minor. The Appellant No.3 has not entered the

witness box. There is a concurrent finding based on the documentary evidence on record that the Appellants herein were not in possession on the date of institution of the suit.

7. The first respondent had admittedly an undivided share in the property of her father. It is not the case of the Appellants that there was a partition between the first and second respondent. There is nothing in the agreement for sale which indicates that the second Respondent had purportedly handed over the possession on behalf of the first Respondent.

8. In view of this position, concurrent findings of fact recorded by the Courts below cannot be disturbed. The findings are not shown to be perverse. There is no merit in the Second Appeal and the same is dismissed with no order as to costs.

9. It is made clear that the observations which are made in this order are for a limited purpose of considering the merits of the suit for injunction filed by the first Respondent.

Judge.